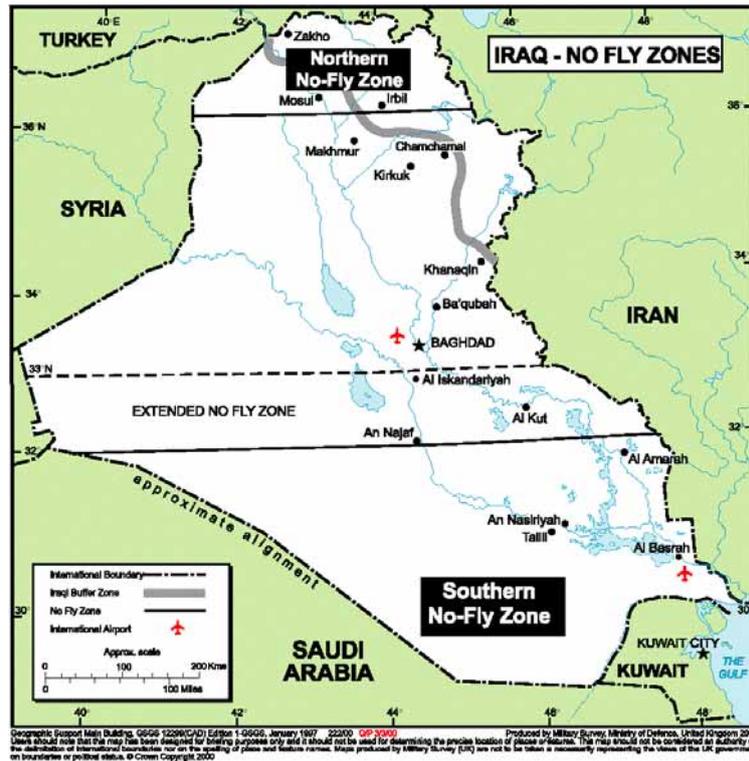


Iraq: No Fly Zones



Background - The Gulf War

1. On 2 August 1990, Iraq invaded Kuwait, prompting the UN Security Council to pass Resolution 660 the same day demanding *'that Iraq withdraw immediately and unconditionally all its forces'*.
2. Iraq's failure to comply led to Resolution 661, adopted on 6 August 1990, which called for the restoration of the 'sovereignty, independence and territorial integrity of Kuwait' and imposed wide-ranging economic sanctions against Iraq.
3. The US and the UK began deployments of troops to the region soon afterwards (Op DESERT SHIELD), with the initial aim of deterring further Iraqi aggression against Saudi Arabia which was threatened by large numbers of Iraqi forces on its border.
4. On 29 November 1990, the Security Council passed Resolution 678 which authorised Member States *"to use all necessary means to uphold and implement resolution 660 (1990)..."* unless Iraq withdrew from Kuwait on or before 15 January 1991.
5. Iraq's failure to meet the UN deadline led to the coalition war against Iraq, Operation DESERT STORM, which began on 16 January 1991 and continued until Iraqi forces were driven from Kuwait on 28 February, when hostilities were suspended.
6. Saddam's defeat gave hope to his opponents inside Iraq and there were two separate but parallel attempts to overthrow his regime. On 1 March 1991, spontaneous demonstrations in Basra and Najaf developed into battles between Shia fighters and Saddam's security

forces and within days the unrest had spread to all the main Shia cities in southern Iraq. Similarly, Kurdish forces saw an opportunity to seize control of northern Iraq. Beginning on 4 March, they had, by 20 March, captured every city in the North, including Kirkuk. Saddam's forces responded with brutal, indiscriminate force, using helicopter gunships and artillery to crush the resistance. Thousands of Shia and Kurds were killed and many more fled their homes, particularly in the North. Fearing an even greater massacre, US commanders warned that they would shoot down any Iraqi aircraft flying over the country; two Iraq Su-22 aircraft were subsequently shot down, one on 15 and one on 22 March.

7. By the end of March, Saddam had reasserted his control over the South and the Northern areas were also back under control in early April. On 5 April, Iraq's ruling Revolutionary Command Council announced "the complete crushing of acts of sedition, sabotage, and rioting in all towns of Iraq".
8. The same day, the UN Security Council passed Resolution 688, which "*condemns the repression of the Iraqi civilian population in many parts of Iraq ... demands that Iraq ... immediately end this repression ... requests the Secretary-General to pursue his humanitarian efforts in Iraq ... appeals to all Member States ... to contribute to these humanitarian relief efforts*".

The No Fly Zones – Summary

9. The Iraqi no-fly-zones were established in April 1991 (north) and August 1992 (south) as a coalition (US, UK and France) initiative in support of UNSCR 688 demanding an immediate end to Saddam's brutal repression of Kurds in north and Shias in south.
10. Iraqi aircraft were forbidden from flying inside the zones. This was enforced by US, UK and French¹ aircraft patrols.
11. Saddam's internal security organisations continued to persecute all opponents of the regime on the ground but coalition aircraft helped to protect the interests of these minorities by ensuring he could not use his airforce to mount all-out assaults. While supervising the no-fly zones, coalition aircraft also collected tactical reconnaissance to help monitor Saddam's compliance with UNSCR 688.
12. On 16-19 December 1998, the US and UK took military action against Iraq under Operation Desert Fox on the basis of Iraq's non-compliance with UNSCOM and the growing concern that Iraq was continuing to develop its chemical and biological weapons capability. From that point on, Iraq no longer recognised the no-fly zones and attacks on coalition aircraft became a common occurrence, although no coalition aircraft were ever shot down by Iraqi forces. Coalition aircraft responded by targeted attacks on elements of Iraq's Integrated Air Defence System. No-fly zone operations ceased in March 2003.

¹ France withdrew in 1996.

The No Fly Zones - detail

Northern No Fly Zone

13. On 6 April 1991, US-led Operation Provide Comfort began to bring humanitarian relief to the Kurds in the North and a no-fly zone was established north of the 36th parallel, enforced by US, UK and French aircraft based at Incirlik in Turkey. The UK contribution was called Op HAVEN and involved 3 Commando Brigade as well as RAF aircraft.
14. In a Parliamentary Statement on 15 April, the then Foreign Secretary explained that the aim was 'to create places and conditions in which refugees can feel secure...We support the territorial integrity of Iraq'.
15. On 7 June 1991, relief operations were handed over to the UNHCR and by mid-July almost all the 400,000 Kurdish refugees who had fled into the mountains on the Iraq-Turkey border region had returned back to their homes or to the camps constructed for them by coalition forces. On 24 July 1991, Op Provide Comfort (and the UK Op HAVEN) ended and was replaced by Op Provide Comfort II. The UK contribution was called Op WARDEN. Its primary aims were to prevent Saddam from attacking the Kurds from the air by maintaining the no-fly zone and to monitor that Saddam was complying with UNSCR 688. There was also a limited humanitarian element to the mission, with the continued distribution of supplies to Kurds and other minorities in the region. In October 1995, the UN assumed full responsibility for the humanitarian elements and on 27 December 1996, France announced that because of the lack of a direct humanitarian element, it would not participate in the successor to the operation. On 31 December 1996, Op Provide Comfort II formally ended. On 1 January 1997 Op Northern Watch began as a successor to Op Provide Comfort II with just US and UK aircraft taking part.

The Southern No Fly Zone

16. In 1992, concern mounted about Saddam's continued persecution of the Shia in the South, including his draining of the Arab marshland and forced relocation of the local population. The forced resettlement programme in the marshes was accompanied by a counterinsurgency campaign that included indiscriminate attacks by artillery, helicopter gunships and fixed-wing aircraft on villages. On 11 August 1992, the UN special rapporteur on Iraq set out his concerns directly to the UN Security Council. On August 27, in response to these concerns, US, UK, and French forces launched Operation Southern Watch, imposing an "air-exclusion" zone south of the 32nd parallel using aircraft based in Saudi Arabia. The UK contribution was known as Op JURAL.
17. The first two years involved relatively routine patrolling of the no-fly zone, although two Iraqi fighters were shot down and elements of Iraq's ground based air defence system posing a threat were attacked in three incidents in December 1992 and January 1993. In October 1994, there was an increase in tension after Saddam deployed a large number of ground troops south of the 32nd parallel. The coalition responded by deploying additional forces to the Gulf (the UK deployed six additional Tornado GR1s and sixteen extra crews, plus 45 Commando Group under Op DRIVER), following which Iraqi forces were withdrawn north of the 32nd parallel. In August 1996, after a period of inter-Kurd conflict in northern Iraq between the Kurdish Democratic party (KDP) and the Patriotic Union of Kurdistan (PUK), Saddam allied himself with the KDP and at their request intervened militarily, providing

15,000 troops to help them re-occupy Irbil and take Sulaymaniyah from the PUK. Concerned at the possibility of Saddam reasserting control in the north under the cover of inter-Kurdish fighting, planning began for a possible coalition response (Op Desert Strike). In the UK this was known as Op LANCASTER. RAF aircraft were placed on standby to reinforce the detachments at Incirlik and Dhahran but, in the event, military action was confined to US Tomahawk cruise missiles, launched in two attacks on 3rd and 4th September and Iraq was informed that the no-fly zone had been extended northwards to the 33rd parallel (French aircraft only continued to participate in patrols up to the 32nd parallel). Iraqi forces then withdrew from Kurdish controlled northern Iraq.

1997-98 crisis

18. Patrolling the (extended) southern no-fly zone continued as normal until mid-1997, when Iraq resumed its blocking of some UNSCOM operations. On 29 September 1997, Iran attacked Iranian terrorist camps in Iraq. The Iraqi response was to launch aircraft to defend their airspace, violating both no-fly zones but particularly the southern no-fly zone. Violations continued for around 5 weeks before ceasing in response to intensified coalition patrols. In the UK, plans were drawn up and refined throughout October for possible coalition response to further Iraqi violations of the no-fly zones and in response to their lack of cooperation with UNSCOM. On 13 November 1997, following a demand that US personnel working for UNSCOM leave Iraq immediately, UNSCOM decide to withdraw temporarily from Iraq. On 14 November, the UK initiated Op BOLTON and HMS INVINCIBLE was ordered to sail from the Caribbean to Gibraltar in preparation for a possible deployment to the Gulf, and duly embarked RAF Harriers. Op BOLTON formally took over the southern no-fly zone operations previously conducted under Op JURAL.
19. Despite intense diplomatic activity, from mid-December to mid January 1998, UNSCOM continued to report Iraqi non-compliance with their inspectors. On 16 January, the UK authorised an aircraft carrier to sail for the Gulf and on 6 February it was decided to deploy Tornado GR1 aircraft to Kuwait. Discussions between the UN and Iraq continued in a similar vein throughout 1998. Although the UN Secretary General appeared to have brokered an agreement in late-February 1998, the UK decided to retain forces in the Gulf until it was clearer whether Iraq would actually resume cooperation with UNSCOM. In late March, following improved Iraqi behaviour, UK forces began an incremental re-posturing, withdrawing the aircraft carrier but deploying additional Tornado aircraft to Kuwait.
20. On 5 August 1998, Iraq declared that it was halting cooperation with UNSCOM and the IAEA pending the oil embargo being lifted and UNSCOM being reorganised. On 9 September, the UN Security Council passed Resolution 1194 condemning Iraq's decision. Following further diplomatic activity, on 31 October Iraq announced that it would cease all forms of interaction with UNSCOM. On 5 November, the UN Security Council passed resolution 1205 condemning Iraq's actions and calling for it to rescind its decisions of 5 August and 31 October. UNSCOM withdrew all its personnel from Iraq on 11 November 1998.
21. On 12 November 1998, the US and the UK warned Iraq that it would face a substantial military strike if it did not return to full compliance with UN Resolutions. On 14 November the US and the UK authorised the launch of an initial wave of strike aircraft. Two hours before the first air strikes were due to take place, Iraq indicated that it was willing to comply with UN demands. The UK and the US suspended military action on the basis that Iraq had agreed to 'unconditional resumption of co-operation'. UNSCOM inspectors returned to Iraq on 17 November. Iraqi co-operation was short-lived and on 15 December 1998 the

Executive Chairman of UNSCOM, Richard Butler, wrote to the UN Secretary General to update him on Iraqi compliance since November, concluding that 'Iraq's conduct ensured that no progress was able to be made in either the fields of disarmament or accounting for its prohibited weapons programmes'. The same day, France announced that it was suspending its involvement in the southern no-fly zone.

Operation Desert Fox and its aftermath

22. On 16 December 1998, military action against Iraq was initiated by US and UK forces under Operation DESERT FOX. This was on the basis of Iraq's non-compliance with UNSCOM and the growing concern that Iraq was continuing to develop its chemical and biological weapons capability.
23. The legal basis for DESERT FOX was not the same as for the establishment of the No Fly Zones. The UK relied on UN Security Council Resolution 1154 (under which Iraq was required to accord immediate and unrestricted access to UNSCOM and IAEA inspectors and warned that failure to do so would have 'the severest consequence for Iraq') and Resolution 1205 (condemning the decision to stop co-operation with UNSCOM and demanding rescission of that decision). This, the UK argued, had revived the authority to use military force under Resolution 678.
24. The objective of the operation was "to reduce substantially Saddam's ability to threaten his neighbours and international security, in particular by degrading his weapons of mass destruction capability, including control and delivery systems, and his wider military capability".
25. US and UK forces used over 400 cruise missiles (more than in the 1991 Gulf Conflict), and 218 tactical bomber sorties to attack 100 targets including:
 - sites identified as being involved in Iraq's weapons of mass destruction programmes;
 - command and control facilities through which Saddam controlled military and internal security forces;
 - the Iraqi Republican Guard;
 - the Iraqi air defence system;
 - airfields, including those associated with helicopter forces used for internal repression.
26. The operation ended on 19 December. UK forces participated in 32 bomber sorties (15 per cent of the total missions) involving Tornado GR1 aircraft based in Kuwait.
27. All no-fly zone patrols were suspended during Operation Desert Fox, but resumed (by US and UK aircraft only) in the southern no-fly-zone on 22 December 1998, and in the northern no-fly-zone on 28 December.

28. After December 1998, Iraq no longer recognised the no-fly zones and attacks on coalition aircraft became a common occurrence. Coalition aircraft were fired at by Iraqi surface-to-air missiles and anti-aircraft artillery or targeted by fire control radars. In responding to this threat, coalition aircraft targeted a variety of different elements of Iraq's Integrated Air Defence System, such as radar sites and associated communications and control networks, surface-to-air missile batteries, and anti-aircraft artillery positions. RAF Jaguars flying reconnaissance operations in the northern no-fly zone did not carry or drop air-to-ground ordnance, but RAF Tornado aircraft did so in the southern no-fly zone on numerous occasions.

The end of the No Fly Zones

29. Operations in both no-fly zones ceased in March 2003 with the start of Op Iraqi Liberation (later called Op Iraqi Freedom). They were stood-down formally on 1 May 2003.

Legal basis for the No Fly Zones

30. Generally speaking there are only two bases for using force:

- a. if it is in exercise of the right of individual or collective self defence under customary international law, which allows the use of force to defend against an actual or imminent armed attack using force that is necessary (i.e. the only effective means of dealing with the threat) and proportionate (no more than reasonably necessary to deal with the threat);
- b. if it is authorised by the UN Security Council under Chapter VII of the UN Charter.

31. The No Fly Zones were not themselves justified on the grounds of self defence – there was no evidence of the threat of an imminent attack. (There were separate issues about targeting which are dealt with further below). Nor were the No Fly Zones explicitly authorised by the Security Council.

32. UN Security Council Resolution 688 did however demand an end to the repression of the Shia and Kurd peoples. This is often cited as the legal base for the No Fly Zones, but that is not the whole picture. The relevance of UNSCR 688 was that the NFZs were consistent with its purpose, but as UNSCR 688 was not made under Chapter VII it could not authorise the use of military force.

33. In answer to a Parliamentary Question in 1998², Baroness Symons, answering a question about the use of force in Kosovo, made reference to the Government's position in respect of Northern Iraq. She said that, while there is no general doctrine of humanitarian necessity in international law, cases have nevertheless arisen (as in Northern Iraq in 1991) when, in light of all the circumstances, a limited use of force was justifiable in support of the purposes laid down by the Security Council but without the Council's express authorisation, when that was the only means to avert an immediate and overwhelming humanitarian catastrophe. Such cases would be exceptional, and would depend on an objective assessment of the factual circumstances at the time and the terms of the relevant Security Council decision.

34. The Secretary of State for Defence explained the legal justification for the NFZs to the House of Commons Select Committee on Defence in 2000 (Thirteenth Report, para 30). He justified it as:

² HL Deb 16 November 1998 Hansard vol 594 cc 139-40

“essentially based on the overwhelming humanitarian necessity of protecting people on the ground, combined with the need to monitor the effect of UNSCR 688; so it is the two taken in combination that provide the legal justification.”

35. Similarly, in the House of Commons (Hansard, 26 February 2001), the Secretary of State for Defence, Geoff Hoon, explained³:

“The legal justification for the patrolling of the no-fly zones does not rest on Security Council Resolution 688. That has not been the government’s position. In terms of humanitarian justification, we are entitled to patrol the no-fly zones to prevent a grave humanitarian crisis. That is the legal justification in international law. It does not rest on Resolution 688, although that Resolution supports the position we have adopted.”

36. In relation to the Northern No Fly Zone, the government’s position then was that the measure was necessary to save lives – those of the Kurds - threatened on a massive scale. This would justify the deployment of civilian personnel, along with their necessary military protection. There were, it was recognised, no clear precedents for this, and it was seen as an emergency measure.
37. With regard to the Southern No Fly Zone, the Government was satisfied that it would be legally defensible on the basis that the humanitarian need, while not sufficiently extreme to justify offensive action, nevertheless was serious and was likely to deteriorate if no action was taken.
38. The US/UK patrols of the NFZ were therefore in the government’s view based on humanitarian necessity and the need to uphold Resolution 688.
39. This remained the consistent position until Operation Telic was authorised in March 2003.

Legal basis for defending the No Fly Zones

40. As to targeting of assets within the No Fly Zones, it remained the UK’s position that it was engaged in a lawful activity in monitoring the NFZs and if coalition forces were attacked or under imminent threat of attack, they were entitled to defend themselves. So UK forces participating in the No Fly Zones were permitted to attack targets which were or contributed to actual or imminent threat of attack. This was based on the inherent right of self defence.
41. The need to defend the No Fly Zones was particularly acute following DESERT FOX, after which Iraqi activity and attacks on coalition forces increased significantly.
42. The Prime Minister in a statement following events in 2001, when US and UK aircraft attacked a number of targets, noted that the action was for the sole purpose of defending the pilots and aircrew patrolling the no-fly zones. The Ministry of Defence said that the mission was conducted in self defence in response to repeated Iraqi threats to coalition aircraft carrying out routine patrols of the Southern no-fly zone.

Ministry of Defence

6th November 2009

³ HC Deb 26 February 2001 vol 363 cc 620-34